

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AMIRA SALEM,

Plaintiff,

Case No. 04-72250

v.

Hon. John Corbett O'Meara

MS. YUKINS, *et al.*,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION FOR
RELIEF FROM JUDGMENT PURSUANT TO RULE 60(b)**

Before the court is Plaintiff's motion for relief from judgment pursuant to Rule 60(b), filed February 27, 2006. Defendants submitted a response March 30, 2006; Plaintiff filed a reply brief on April 24, 2006.

Appearing pro se, Plaintiff filed a civil rights action pursuant to 42 U.S.C. § 1983 against several prison officials, alleging that they violated her rights under the Eighth Amendment by failing to provide her with proper medical care. Plaintiff's initial complaint contained some claims that were not administratively exhausted. The court permitted Plaintiff to amend her complaint to include only the exhausted claims. Plaintiff did so on January 5, 2005.

Subsequently, on April 27, 2005, the Sixth Circuit issued its opinion in Jones Bey v. Johnson, 407 F.3d 801 (6th Cir. 2005). In Jones Bey, the court adopted the "total exhaustion" rule, requiring that all complaints containing exhausted and unexhausted claims be dismissed in their entirety. Relying upon Jones Bey, Defendants filed a motion to dismiss, contending that the court should apply the total exhaustion rule retroactively and dismiss Plaintiff's case in its entirety. Magistrate Judge Morgan issued a report and recommendation, which was adopted by

this court, granting Defendants' request for relief. The court dismissed Plaintiff's entire complaint without prejudice on July 13, 2005.

In her motion for relief from judgment, Plaintiff contends that a new case supports her argument that her action should have been allowed to proceed with the exhausted claims only. See Ford v. Rodda, 2005 U.S. Dist. LEXIS 22156 (E.D. Mich. Sept. 26, 2005) (Lawson, J.). Rule 60(b) allows a district court to vacate a judgment under certain circumstances, such as mistake, inadvertence, surprise, excusable neglect, or newly discovered evidence. See Fed. R. Civ. P. 60(b). Plaintiff seeks relief under Rule 60(b)(6), the catch-all provision allowing a judgment to be vacated for "any other reason justifying relief from the operation of the judgment." Id.

The Sixth Circuit has set forth the following standard governing relief under Rule 60(b)(6):

[R]elief under Rule 60(b) is "circumscribed by public policy favoring finality of judgments and termination of litigation." This is especially true in an application of subsection (6) of Rule 60(b), which applies "only in exceptional or extraordinary circumstances which are not addressed by the first five numbered clauses of the Rule." This is because "almost every conceivable ground for relief is covered" under the other subsections of Rule 60(b). Consequently, courts must apply Rule 60(b)(6) relief only in "unusual and extreme situations where principles of equity *mandate* relief."

Blue Diamond Coal Co. v. Trustees of the UMWA Combined Benefit Fund, 249 F.3d 519, 524 (6th Cir. 2001) (citations omitted) (emphasis in original). "It is well established that a change in decisional law is usually not, by itself, an 'extraordinary circumstance' meriting Rule 60(b)(6) relief." Id.

In seeking Rule 60(b)(6) relief here, Plaintiff relies on a opinion from another judge in

this district, which supports her argument that her exhausted claims should have proceeded on the merits. See Ford, 2005 U.S. Dist. LEXIS 22156. This authority, while persuasive, is not binding on this court and does not even rise to the level of a change in the law. Accordingly, there are no extraordinary circumstances warranting Rule 60(b)(6) relief in this case.

Therefore, IT IS HEREBY ORDERED that Plaintiff's February 27, 2006 motion for relief from judgment is DENIED.

s/John Corbett O'Meara
John Corbett O'Meara
United States District Judge

Dated: May 16, 2006

Copies:

Amira Salem

258302

Scott Correctional Facility

47500 Five Mile Road

Plymouth, MI 48170

smithdm2@michigan.gov

kkoester@chapmanandassociates.com

rchapman@chapmanandassociates.com